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THIS DISPOSITION IS NOT CITABLE AS PRECEDENT OF THE T.T.A.B.

Paper No. 11
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UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re The 67 Liquor Shop, Inc.

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Serial No. 75/677,974

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Bruce E. Lilling of Lilling & Lilling P.C. for The 67 Liquor Shop, Inc.

Alex S. Keam, Trademark Examining Attorney, Law Office 114 (K. Margaret Le, Managing Attorney).

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Before Hanak, Chapman and Holtzman, Administrative Trademark Judges.

Opinion by Chapman, Administrative Trademark Judge:

On April 8, 1999, The 67 Liquor Shop, Inc. filed an application to register on the Principal Register the mark WALL STREET WINE TRADER for "wine brokerage services" in International Class 35. The application is based on applicant's assertion of a bona fide intention to use the mark in commerce. Applicant has disclaimed the words "wine trader."

Registration has been finally refused under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, if used in connection with

its identified services, would so resemble the registered mark WALL STREET for "whiskey" in International Class 33,[1] as to be likely to cause confusion, mistake or deception.

Applicant has appealed, and briefs have been filed. Applicant requested an oral hearing, but subsequently withdrew that request.

Upon consideration of the pertinent factors set forth by the Court in In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973), for determining whether a likelihood of confusion exists, we find that confusion is not likely.

In its brief (p. 4), applicant concedes that the marks are similar stating that "as self apparent here, the principal portion of each of the marks is WALL STREET, so the consideration necessarily revolves around the similarity or dissimilarity between the goods and services."

However, applicant contends that even identical trademarks can be owned by unrelated companies for unrelated products or services; that solely because goods and/or services are in the same general field, does not result automatically in a finding of likelihood of

[1] Registration No. 963,057, issued July 3, 1973, Section 8 affidavit accepted, Section 15 affidavit acknowledged, renewed.

confusion; that the alcoholic beverage industry is highly regulated; and that both federal and state laws (e.g., New York) create a very clear demarcation between rectifiers/distillers and sellers. Specifically, applicant points out that "both Federal and State law prevent the same entity from rectifying and/or distilling alcoholic beverages and then also acting as a direct seller to the public" (brief, p. 5); and that the public recognizes these as unrelated industries, knowing that a seller of wine cannot be using the same mark as a manufacturer of alcoholic beverages. Applicant submitted the declaration of its president, Bernard Weiser, regarding the laws regulating the alcoholic beverage industry.

The Examining Attorney argues that applicant's services and registrant's goods are related; that retailers and consumers will probably not be aware of the laws which prohibit manufacturers of alcoholic beverages from selling same; that applicant may expand its brokerage services to include whiskey; and that the general purchasing public and retailers of alcoholic products are likely to be confused as to the source of these goods and services. As evidence that both wine and whiskey emanate from a single source, the Examining Attorney submitted several excerpted stories

retrieved from the Nexis database and the Internet, as well as copies of several third-party registrations.

It is well settled that the Board must determine the issue of likelihood of confusion on the basis of the goods and/or services as identified in the application and the registration. See Canadian Imperial Bank of Commerce, National Association v. Wells Fargo Bank, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987). The relatedness of wine and whiskey is not the factual issue before the Board; rather it is "wine brokerage services" and "whiskey" which must be considered.

The record shows that the same source may produce both wine and whiskey, but there is no evidence that the same source may produce whiskey and also provide wine brokerage services. To the contrary, federal and state laws prohibit the same company from distilling alcoholic beverages and also acting as a retailer of those alcoholic beverages. The fact that the involved goods and services are both in the general alcoholic beverage field is not sufficient to establish the relatedness of these goods and services. Rather, it must be shown that a commercial relationship exists between the goods and services such that the use of the mark is likely to produce opportunities for purchasers or users to be misled about their source or sponsorship.

See In re Cotter and Company, 179 USPQ 828 (TTAB 1973). See also, General Electric Company v. Graham Magnetics Incorporated, 197 USPQ 690 (TTAB 1977); and Harvey Hubbell Incorporated v. Tokyo Seimitsu Co., Ltd., 188 USPQ 517 (TTAB 1975).

We have carefully reviewed the entire record, and we are not convinced on this ex parte record of the relatedness of the involved goods and services. Applicant has coherently argued that these goods and services, as identified, are not related and are sold through differing channels of trade. The Examining Attorney has not made a prima facie showing establishing the relatedness of the goods and services, or the similarity of trade channels. See Buitoni Foods Corp. v. Gio. Buton & C. S.p.A., 680 F. 2d 290, 216 USPQ 558 (2nd Cir. 1982), aff'g 530 F.Supp. 949, 214 USPQ 475 (EDNY 1981), rev'g 205 USPQ 477 (TTAB 1979); and Peyrat et al. v. L.N. Renault & Sons, Inc. et al., 247 F.Supp. 1099, 148 USPQ 77 (SDNY 1965). Cf. United Rum Merchants Limited v. Fregal, Incorporated, 216 USPQ 217 (TTAB 1982).

Decision: The refusal to register under Section 2(d) is reversed.